

CLAUSE I-56 – GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR SUBCONTRACTS) (August 2002)

(a) Government-furnished property.

- (1) The term "subcontractor's managerial personnel," as used in paragraph (g) of this clause, means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of –
 - (i) All or substantially all of the Subcontractor's business;
 - (ii) All or substantially all of the Subcontractor's operation at any one plant, or separate location at which the subcontract is being performed; or
 - (iii) A separate and complete major industrial operation connected with performing this subcontract.
- (2) SURA shall deliver to the Subcontractor, for use in connection with and under the terms of this subcontract, the Government-furnished property described in the Schedule or specifications, together with such related data and information as the Subcontractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").
- (3) The delivery or performance dates for this subcontract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Subcontractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Subcontractor to meet the subcontract's delivery or performance dates.
- (4) If Government-furnished property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt, notify the Subcontracting Officer, detailing the facts, and, as directed by the Subcontracting Officer and at SURA expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Subcontractor, the Subcontracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.
- (5) If Government-furnished property is not delivered to the Subcontractor by the required time or times, the Subcontracting Officer shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government-furnished property.

- (1) The Subcontracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this subcontract or (ii) substitute other Government-furnished property for the property to be provided by SURA or to be acquired by the Subcontractor for SURA under this subcontract. The Subcontractor shall promptly take such action as the Subcontracting Officer may direct regarding the removal, shipment, or disposal of the property covered by this notice.
- (2) Upon the Subcontractor's written request, the Subcontracting Officer shall make an equitable adjustment to the subcontract in accordance with paragraph (h) of this clause, if SURA has agreed in the Schedule to make such property available for performing this subcontract and there is any –
 - (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
 - (ii) Withdrawal of authority to use property, if provided under any other subcontract or lease.

(c) Title.

- (1) The Government shall retain title to all Government-furnished property.
- (2) Title to all property purchased by the Subcontractor for which the Subcontractor is entitled to be reimbursed as a direct item of cost under this subcontract shall pass to and vest in SURA upon the vendor's delivery of such property.
- (3) Title to all other property, the cost of which is reimbursable to the Subcontractor, shall pass to and vest in SURA upon –
 - (i) Issuance of the property for use in subcontract performance;
 - (ii) Commencement of processing of the property for use in subcontract performance; or
 - (iii) Reimbursement of the cost of the property by SURA, whichever occurs first.

- (4) All Government-furnished property and all property acquired by the Subcontractor, title to which vests in SURA under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by SURA, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
- (d) Use of Government property. The Government property shall be used only for performing this subcontract, unless otherwise provided in this subcontract or approved by the Subcontracting Officer.
- (e) Property administration.
- (1) The Subcontractor shall be responsible and accountable for all Government property provided under the subcontract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this subcontract.
- (2) The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5.
- (3) If damage occurs to Government property, the risk of which has been assumed by SURA under this subcontract, SURA shall replace the items or the Subcontractor shall make such repairs as SURA directs. However, if the Subcontractor cannot effect such repairs within the time required, the Subcontractor shall dispose of the property as directed by the Subcontracting Officer. When any property for which SURA is responsible is replaced or repaired, the Subcontracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.
- (f) Access. The Government and/or SURA and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.
- (g) Limited risk of loss.
- (1) The Subcontractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this subcontract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.
- (2) The Subcontractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this subcontract (including expenses incidental to such loss, destruction, or damage) –
- (i) That results from a risk expressly required to be insured under this subcontract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
- (ii) That results from a risk that is in fact covered by insurance or for which the Subcontractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
- (iii) For which the Subcontractor is otherwise responsible under the express terms of this subcontract;
- (iv) That results from willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel; or
- (v) That results from a failure on the part of the Subcontractor, due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.
- (3) (i) If the Subcontractor fails to act as provided by subdivision (g)(2)(v) above, after being notified (by certified mail addressed to one of the Subcontractor's managerial personnel) of SURA's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel.
- (ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Subcontractor can establish by clear and convincing evidence that such loss, destruction, or damage –
- (A) Did not result from the Subcontractor's failure to maintain an approved program or system; or
- (B) Occurred while an approved program or system was maintained by the Subcontractor.
- (4) If the Subcontractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Subcontractor for loss or destruction of, or damage to, the property as set forth

above. However, the Subcontractor shall require the Subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the Subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Subcontracting Officer, relieves the Subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime subcontract.

- (5) The Subcontractor shall notify the Subcontracting officer upon loss or destruction of, or damage to, Government property provided under this subcontract, with the exception of low value property for which loss, damage, or destruction is reported at subcontract termination, completion, or when needed for subcontract performance. The Subcontractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Subcontracting Officer a statement of –
 - (i) The lost, destroyed, or damaged Government property;
 - (ii) The time and origin of the loss, destruction, or damage;
 - (iii) All known interests in commingled property of which the Government property is a part; and
 - (iv) The insurance, if any, covering any part of or interest in such commingled property.
- (6) The Subcontractor shall repair, renovate, and take such other action with respect to damaged Government property as the Subcontracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Subcontractor's) that separation is impractical, the Subcontractor may, with the approval of and subject to any conditions imposed by the Subcontracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Subcontractor shall be entitled to an equitable adjustment in the subcontract price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Subcontracting Officer shall give due regard to the Subcontractor's liability under this paragraph (g) when making any such equitable adjustment.
- (7) The Subcontractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that SURA may have expressly required the Subcontractor to carry such insurance under another provision of this subcontract.
- (8) In the event the Subcontractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Subcontractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, SURA, as directed by the Subcontracting Officer.
- (9) The Subcontractor shall do nothing to prejudice SURA's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Subcontracting Officer, the Subcontractor shall, at SURA's expense, furnish to SURA all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of SURA) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Subcontractor shall enforce for the benefit of SURA the liability of the Subcontractor for such loss, destruction, or damage.
- (h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected subcontract provision in accordance with the procedures of the Changes clause. When appropriate, the Subcontracting Officer may initiate an equitable adjustment in favor of SURA. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy. SURA shall not be liable to suit for breach of subcontract for –
 - (1) Any delay in delivery of Government-furnished property;
 - (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
 - (3) A decrease in or substitution of Government-furnished property; or
 - (4) Failure to repair or replace Government property for which SURA is responsible.
- (i) Final accounting and disposition of Government property. Upon completing this subcontract, or at such earlier dates as may be fixed by the Subcontracting Officer, the Subcontractor shall submit, in a form acceptable to the

Subcontracting Officer, inventory schedules covering all items of Government property not consumed in performing this subcontract or delivered to SURA. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Subcontracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by this subcontract or paid to the Government as directed by the Subcontracting Officer. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Subcontracting Officer may authorize or direct the Subcontractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Subcontractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Subcontractor's established accounting procedures.

- (j) Abandonment and restoration of subcontractor premises. Unless otherwise provided herein, SURA –
 - (1) May abandon any Government property in place, at which time all obligations of SURA regarding such abandoned property shall cease; and
 - (2) Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or subcontract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.
- (k) Communications. All communications under this clause shall be in writing.
- (l) Overseas subcontracts. If this subcontract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.